

Approved 3/5/85
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by REPRESENTATIVE JOE KNOPP at
Chairperson

3:30 ~~am~~ p.m. on February 18, 1985 in room 526-S of the Capitol.

All members were present except:

Representatives Douville and Duncan were excused.

Committee staff present:

- Jerry Donaldson, Legislative Research Department
 - Mike Heim, Legislative Research Department
 - Mary Ann Torrence, Revisor of Statute's Office-Excused
 - Becca Conrad, Secretary
- Conferees appearing before the committee:

- Captain Ron Jackson, Overland Park Kansas Police Department
- Lee Nusser, District Magistrate Judge from St. John
- Marjorie Van Buren, Judicial Administrator's Office
- Verle Swenson, District Magistrate Judge from Alma
- Representative Gene Shore

HB 2260 - Concerning criminal procedure; relating to jurisdiction of certain law enforcement officers.

Captain Ron Jackson, Overland Park, Kansas, Police Department, spoke in support of HB 2260. See Attachment No. 1.

Captain Jackson said the type of warrants they issue are for traffic, failure to appear in other counties where the residents live and also felony warrants from other counties. He said that if they call for assistance from one of these other counties, by the time the assistance gets there the person who they were trying to issue an arrest warrant on had left.

Representative Vancrum said it was fine to make their jurisdiction statewide but he specifically wanted the restriction in lines 64-66 to make sure that law enforcement officers in any jurisdiction can go into the jurisdictions on a case.

HB 2162 - Concerning district magistrate judges.

Lee Nusser, District Magistrate Judge from St. John, testified in opposition to HB 2162. He stated that this bill in its present form requires the magistrate judges to run for election district-wide. He said this was contrary to the present law which requires that magistrates stand for election or retention in the county where the magistrate resides. Although they are occasionally assigned to go into another county, it is not on a regular basis. He said they do not have the authority to move about on their own free will. Because he has not been assigned to work in each county which he must run for election in, he only has recognition in part of those counties. He said the economics of running for election in all counties instead of just the one they work in is totally unreasonable and they don't feel this bill is in the best interest of the judicial system.

Marjorie Van Buren, Judicial Administrator's Office, spoke in opposition to the bill. She presented a map of the district which is Attachment No. 2. She stated that the law requires there be a judge in every county. In order to utilize the judges most effectively, they are assigned to places where they are needed within the district, and across district lines. She said the case management system here in Kansas is probably the best in the country. In order to keep meeting the time standards and keeping the case management system at this level, they need to be able to move judges to other districts.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 526-S, Statehouse, at 3:30 ~~a.m.~~ p.m. on February 18, 1985.

Verle Swenson, District Magistrate Judge from Alma, Kansas, also spoke in opposition of HB 2162. His testimony is shown in Attachment No. 3.

Representative Gene Shore spoke in opposition to HB 2162 stating that the people in his judicial district would like to have some control over who their magistrate judge is. He said Liberal, which is in their judicial district, has half of the total population of the six counties in the judicial district. He said the magistrate judge's primary responsibility is the county where he is elected and they would like to keep it that way.

Representative Bideau spoke in favor of this bill. He said that this bill came about because of a local problem. He said the voters of the counties should be entitled to vote on judges in their judicial districts where they routinely come in and hear their cases. An alternative would be to go back and limit a magistrate judge to the jurisdiction within that home county. He said there is no other official in the State of Kansas who has jurisdiction to exercise control over citizens and those citizens have no power to vote or do anything about it.

Representative Solbach brought out the point that the people have an opportunity to vote upon the policy of assigning a judge and Representative Bideau agreed, but said they do not have the opportunity to vote on the performance of the individual.

Representative Solbach felt there should be another way to resolve the problem.

HB 2203 - Amending the uniform controlled substances act; relating to penalties for certain sales to minors.

Representative Bideau said this bill makes it a class D felony to distribute drugs to a minor. He said under the current drug laws, for a felony conviction to be obtained on all but the opiates and cocaine, sale has to be proven. Currently what is called distribution is only a misdemeanor for all drugs except the opiates and cocaines. He said this makes distribution to a minor, ie. a gift or distribution where you can't prove an exchange of cash, a class D felony. A sale is now a class C felony. He said the only area there might be a problem in is when an adult gives drugs to a minor, which is a felony.

The meeting adjourned at 4:55 p.m.

GOOD AFTERNOON, MR. CHARIMAN AND MEMBERS OF THE HOUSE JUDICIARY COMMITTEE.

I AM CAPTAIN RONALD JACKSON OF THE OVERLAND PARK, KANSAS POLICE DEPARTMENT. I AM HERE TO SPEAK IN SUPPORT OF HOUSE BILL 2260.

POLICE OFFICERS OF URBAN CITIES NEED THE CAPABILITY OF EXECUTING VALID ARREST WARRANTS OUTSIDE THEIR CITY LIMITS WITHOUT OBLIGATING TIME, MANPOWER, AND EQUIPMENT OF THAT PARTICIULAR JURISDICTION.

MANY TIMES THE SHERIFF'S OFFICE DOES NOT HAVE THE AVAILABLE MANPOWER TO EXECUTE THE WARRANT FOR US. IF WE GO INTO MERRIAM, PRAIRIE VILLAGE, MISSION, OR OTHER CITIES, OFFICERS AT TIMES ARE INVOLVED WITH THEIR OWN CITY'S PROBLEMS AND ARE NOT IMMEDIATELY AVAILABLE TO ASSIST. THIS SITUATION CREATES DELAYS AND THE POTENTIAL DISAPPEARANCE OF OUR SUSPECT.

THIS BILL AS PROPOSED IS SUPPORTED BY THE CITY AND THE POLICE DEPARTMENT OF OVERLAND PARK.

IF I AM NOT BEING PRESUMPTUOUS, I WOULD REQUEST YOUR CONSIDERATION FOR THE FOLLOWING AMENDMENT TO THIS BILL.

AMEND SECTION 4, LINE 0069 and LINE 0070 TO READ:

WITHIN THE STATE OF KANSAS WHEN EXECUTING A VALID
ARREST WARRANT TO THE EXTENT NECESSARY TO EXECUTE
SUCH WARRANT.

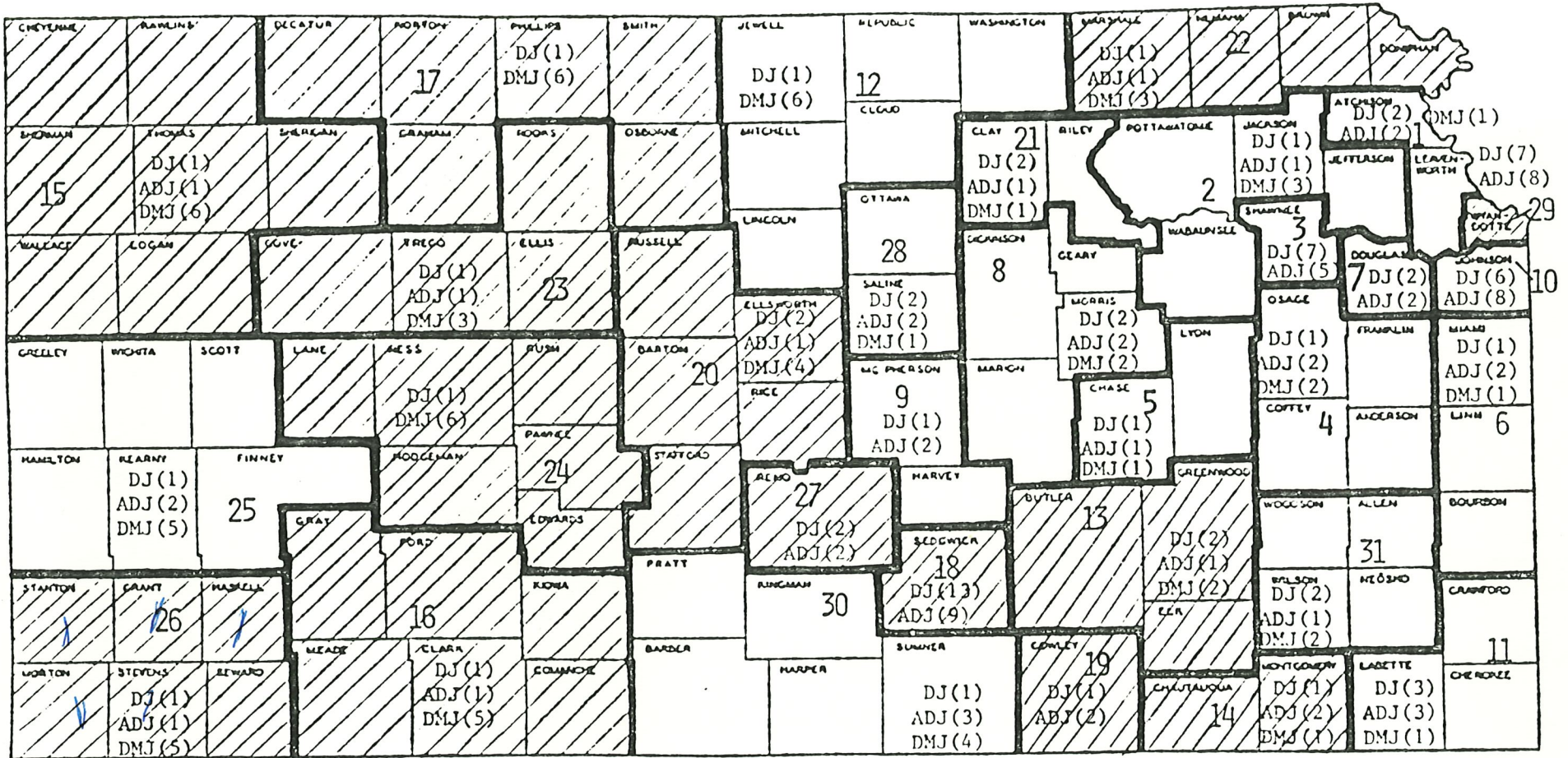
THIS AMENDMENT THEN WOULD ALLOW POLICE OFFICERS IN JOHNSON COUNTY TO
EXECUTE A VALID ARREST WARRANT IN WYANDOTTE COUNTY OR ANY OTHER
COUNTY WITHIN THE STATE.

I THANK YOU FOR YOUR TIME AND ATTENTION, AND IF MEMBERS OF THE
COMMITTEE HAVE ANY QUESTIONS, I WOULD BE GLAD TO ANSWER THEM.

KANSAS JUDICIAL DISTRICTS

(Effective January 14, 1985)

Attachment No. 2
House Judiciary
February 18, 1988



DJ --- District Judge----- 71
 ADJ--- Associate District Judge---- 69
 DMJ--- District Magistrate Judge--- 71
211

Elected Judges -- DJ = 35
 ADJ = 30
 DMJ = 41
106 or 50%

Elected Judge - 14 Districts or 45%
 Nonpartisan selection process - 17 Districts or 55%

Selected Judges DJ = 36
 ADJ = 39
 DMJ = 30
105 or 50%

HOUSE BILL 2162

18 FEB 85

CHAIRMAN,

REP. JOE KNOPP - MEMBERS OF DISTINGUISHED COMMITTEE

GOOD AFTERNOON -

VERLE SWENSON, DISTRICT MAGISTRATE JUDGE WAB. CO.
2ND JUDICIAL DISTRICT (WAB. - JACKSON, JEFFERSON - POT.)
ALMA, KANSAS

APPEARING ON BEHALF OF DIST. MAG. JUDGES ASSN.

D.M.J. ARE OPPOSED TO HB 2162 - SPECIFICALLY THE SECTIONS DEALING WITH THE DIST. WIDE VOTING FOR MAG. POSITIONS

WE HAVE NO
problem with
the residence
requirement

CONDUCTED SURVEY AMONG MAG. JUDGES AND RESULTS
SHOW 69 JUDGES ARE OPPOSED TO HB 2162 AND
2 JUDGES STATED THEY APPROVED OR SAW NO PROBLEM.

WHY ARE D.M.J. OPPOSED TO HB 2162?

FIRST IMPRESSION OF HB 2162 IS THAT IT IS O.K. - NO BIG DEAL - LET THE JUDICIAL DISTRICT ELECT OR RETAIN THE MAGISTRATE JUDGE, RATHER THAN THE HOME COUNTY OF THE MAGISTRATE JUDGE. THAT WAS MY REACTION ON FIRST READING OF THE BILL. BUT, AFTER A FEW MOMENTS THOUGHT, THE PROBLEMS BEGAN TO SURFACE AND IT IS CLEARLY A BAD BILL FOR DISTRICT MAGISTRATE JUDGES, FOR SMALL POPULATION COUNTIES AND PLAINLY CONTRARY TO LEGISLATIVE INTENT WHEN THE LAWS WERE MADE TO FORM THE UNIFIED COURT SYSTEM FOR THE STATE OF KANSAS IN 1917. I KNOW OF ONLY ONE PROBLEM AREA IN THE STATE OF KANSAS, AND THIS COMES FROM THE AREA THAT REP. BIDEAU LIVES, THE AUTHOR OF THIS PROPOSED AMENDMENT. I AM SORRY TO HEAR THAT THERE IS A PROBLEM AND I FEEL IT CAN BE RESOLVED THROUGH PROPER CHANNELS. IT ISN'T NECESSARY TO UPROOT THE WHOLE STATE TO CORRECT ONE LOCALIZED PROBLEM. AS THE OLD SAYING GOES, 'IF IT AIN'T BROKE, DON'T FIX IT.'

Attachment No. 3
House Judiciary
February 18, 1985

I have said there are problems with HB 2162. EVEN SOME OF THE problems can be divided. Some of the problems effect all DISTRICT MAGISTRATE Judges, other problems are unique depending on whether the judge is elected or on a retention basis. I WILL attempt to keep my remarks limited to the problems that effect judges that are on the retention basis as we are in the second judicial district. Judge LEE NUSER has spoken to ~~the~~ problems that would be faced by the elected DISTRICT MAGISTRATE Judges ACROSS the STATE OF KANSAS.

PROBLEMS —

1. SINCE COURT UNIFICATION, ^{began} ALMOST 7 years ago, I have had one ASSIGNMENT TO JACKSON County - NO ASSIGNMENTS TO JEFFERSON County AND perhaps 12-15 assignments TO POTT. Co. the other 3 counties in the 2nd JUD. DISTRICT. ~~THE~~ ^{THE} general public OUTSIDE OF WABAUNSEE County DO NOT KNOW ME, KNOW WHO I AM, OR ANYTHING ABOUT ME.

2. IN 1984 VOTERS OF WABAUNSEE County VOTED TO retain me as DISTRICT MAGISTRATE JUDGE FOR WAB. COUNTY. YES 2,438, NO 411, what I considered a very comfortable margin. I am well known to voters in Wabaunsee County and I feel they retained me because I am doing the kind of job they want and expect from a DISTRICT MAGISTRATE Judge.

NOW IF the vote was DISTRICT WIDE (WAB-JACK-JEFF-POTT), AND I would note that my figures have to go to the population numbers and not registered votes AS those numbers were unavailable to me (weekend, holiday and time

to prepare presentation) but the problem is still quite evident, the population for the other 3 counties in the district is ^{42,070} 42 plus thousand to ^{6,867} 6 thousand in Wabaunsee County. To be carrying only a margin of 2,000 votes into those other 3 counties where no one knows me would make me very NERVOUS - I don't like those odds. The law does NOT permit me to CAMPAIGN - how will I become known to the VOTERS DISTRICT WIDE? I feel the voters have a right to know the person they are voting for, what his principles are, something other than the thought, 'I guess I will vote to keep him because he's the judge now'. This bill, HB 2162, even takes away from the voter the right to CAST A KNOWLEDGABLE VOTE

3. PERHAPS ONE ANSWER FOR ME WOULD BE TO TAKE ASSIGNMENTS TO THE OTHER 3 COUNTIES AND GET SOME NAME RECOGNITION. SOUNDS SIMPLE AND SHOULD BE NO PROBLEM - BUT AGAIN, LETS EXAMINE THIS CLOSELY AND SEE WHAT REALLY WOULD BE INVOLVED.

mag. My ADMINISTRATIVE JUDGE ASSIGNS ME TO CASES IN JACKSON - JEFFERSON AND POTT. Counties. LIKEWISE, THE OTHER JUDGES ^{in our district} would be assigned to come to WAB. CO. ^{from time to time} to hear my cases. How intelligent would this be? The votes of Wab. County chose me to hear their cases, NOT Judge MASKIL or Judge Reiling. How much additional COST TO THE STATE OF KANSAS will this be when this has to be done all across the STATE. This will be forced on the judges if this bill is passed ~~as this~~ A multitude of problems will be created in an attempt to correct one ISOLATED PROBLEM.

4. In Rep. BIDEAU's area there apparently is a County that has a DISTRICT MAGISTRATE Judge ASSIGNED INTO IT. THIS JUDGE'S POSITION IS IN AN ADJACENT COUNTY, but same judicial district. They are not always satisfied with his work and feel they should be permitted to VOTE ON WHETHER HE SHOULD BE RETAINED OR NOT.

I TAKE ASSIGNMENTS FROM THE Supreme Court INTO LAWRENCE, Douglas County and Emporia, Lyon County. NEITHER COUNTY IS IN THE 2nd Judicial DISTRICT. Already assignments have been made for me to be in Douglas County in April, May, June, July, August AND INTO LYON COUNTY in April. MORE ASSIGNMENTS WILL COME THROUGH THE YEAR, several times more than what I will be assigned to counties in my own Judicial Dist. WOULDN'T IT BE FAIRER AND MORE SENSIBLE TO PERMIT THE VOTERS OF Douglas County and Lyon Co. TO VOTE WHETHER I BE RETAINED AS A JUDGE OR NOT THAN HAVING JACKSON AND JEFFERSON COUNTY VOTE WHEN I NEVER HEAR ANY CASES THERE ANYWAY.

THIS EXAMPLE IS NOT AN ISOLATED INCIDENT AS IT IS A COMMON OCCURRENCE FOR MAGISTRATE JUDGES ALL ACROSS THE STATE. MANY OUT-OF-DISTRICT ASSIGNMENTS TAKE PLACE EVERY MONTH.

5. How would a CHANGE IN THE LAW, AS PROPOSED BY HB 2162, AFFECT OUT-OF-DISTRICT ASSIGNMENTS AND ESPECIALLY THE IMPACT TO THE LARGER METRO AREA COURTS? I believe most other magistrate judges would FEEL AS I DO. OUT-OF-DISTRICT ASSIGNMENTS WOULD HAVE TO BE REFUSED BECAUSE OUR ASSIGNMENT TIME WOULD BE USED UP ON IN-DISTRICT ASSIGNMENTS, WHERE WE CAN BECOME

ACQUAINTED WITH AND KNOWN TO THE PEOPLE WHO WILL BE VOTING TO ELECT OR RETAIN US. THIS CAN ~~CAUSE~~ ^{CAUSE} AN IMPACT ON THE LARGER COURTS. I don't believe there can be much doubt that the MAGISTRATE JUDGES ASSIGNMENT PROGRAM TO THE LARGER COURTS; TOPEKA; LAWRENCE; MANHATTAN; EMPORIA; WICHITA, JUNCTION CITY; KANSAS CITY; GARDEN CITY; GREATBEND; ETC. HAS HAD A SIGNIFICANT IMPACT ON THE REDUCTION OF DELAYS ON CASES IN THESE COURTS. PASSAGE OF HB 2162 COULD HAVE A SIGNIFICANT EFFECT ON DISTRICT MAGISTRATE JUDGES ASSIGNMENTS AND CASE DELAYS ACROSS THE STATE OF KANSAS.

6. ONE POINT THAT HAS TO BE CONSIDERED, EVEN THOUGH SOME MAY CONTEND THE POSSIBILITY WOULD BE REMOTE, OR MAY NOT EVEN EXIST. NOT TO POINT AN ACCUSATORY FINGER TOWARDS ANYONE, BUT, IT MAY EVEN BE POSSIBLE IN THE AREA WHERE THE PRESENT PROBLEM EXIST. THE PROBLEM IS THAT A LARGE COUNTY OR COMBINATION OF COUNTIES, IN A MULTI-COUNTY JUD. DISTRICT COULD CONTROL THE ELECTION OR RETENTION OF A SMALL COUNTY MAGISTRATE JUDGE POSITION AND COULD CONCEIVABLY PLACE THEIR OWN CHOICE ~~IN~~ SMALL COUNTY MAGISTRATE POSITION, THEN GET THEM BACK INTO THEIR OWN COUNTY THROUGH ASSIGNMENTS. AGAIN, LARGE POPULATION COUNTIES COULD INFLUENCE GREATLY THE ELECTION OR RETENTION OF JUDGES IN SMALL COUNTIES. THIS IS NOT RIGHT AND ^{AGAIN} CLEARLY VIOLATES THE LEGISLATIVE INTENT WHEN THE LAWS WERE DRAWN UP TO UNIFY THE COURT SYSTEM FOR THE STATE OF KANSAS.

Small population counties greatly influenced the writing of the law and the requirement of residence within the County for which they were elected DISTRICT MAGISTRATE Judge.

⑤ Small population counties want to elect or retain the

judge of their choice. They don't want larger counties influencing the selection of their judge. They want at least one judge residing in their county. They are ENTITLED TO NO LESS AND I AM QUITE SURE THAT IF AND WHEN THE GENERAL RURAL PUBLIC GETS WIND OF A MOVE ^{THAT MAY} TAKE THIS AWAY FROM THEM, THESE HALLS WILL SURELY SHAKE FROM THE OUTCRY OF THE PEOPLE

7. AGAIN, I am sorry a problem has developed in Rep. Bideau's DISTRICT. I have no personal knowledge of what the problem may be, whether it is a few who are dissatisfied or the DISTRICT AS A WHOLE. Apparently no satisfaction has been found going to the Administrative Judge. Perhaps the next step is taking the problem to the DEPARTMENTAL JUSTICE. I have faith in the Administrative Judges and Departmental JUSTICES AND feel most legitimate problems in any one district can amicably be resolved by them. IF SATISFACTION IS NOT RECEIVED AND A MAJORITY OF THE VOTES FEEL A CHANGE SHOULD BE MADE, WHETHER IT IS THE COUNTY VOTING ON THE MAGISTRATE JUDGE POSITION OR THE DISTRICT VOTING FOR THE ADMIN. JUDGE, THE VOTE TO RE-ELECT OR RETAIN WILL SOON COME AROUND AND THE VOTERS CAN MAKE THEIR CHOICE

CONCLUS. I APPRECIATE YOUR ATTENTION, YOUR TIME AND CONSIDERATION TO MY REMARKS.

PLEASE REMEMBER, AT FIRST GLANCE HB 2162 APPEARS TO BE QUITE HARMLESS AND INSIGNIFICANT. STUDY IT THOROUGHLY, CAREFULLY CONSIDER ALL THE TESTIMONY GIVEN ON THIS BILL. LOOK AT THE HIDDEN IMPLICATIONS

IN THIS bill.

BE FAIR TO 70 other DISTRICT MAGISTRATE Judges
ACROSS THE STATE OF KANSAS AND MORE ESPECIALLY TO
THE VOTERS, THE ONES WHO NOW ELECT OR VOTE TO
RETAIN THEIR DISTRICT MAGISTRATE Judge.

URGE THAT
you

KILL HOUSE BILL NO. 2162 here, in committee, NOW.

THANK YOU VERY MUCH AND I WOULD BE MOST HAPPY TO
ANSWER ANY QUESTION YOU MAY HAVE.

